

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 9

In The Matter Of:

South Bay Asbestos Area Site
Mrs. Charlotte Thompson
A&R Concrete
George Maciel Trucking, Inc.,

Respondents.

U.S. EPA
Docket No. 91-27

Proceeding Under Section 106(a) of
the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended
(42 U.S.C. section 9606(a))

ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

This Order directs Respondents, Charlotte Thompson, A&R Concrete, and George Maciel Trucking Inc., to design and implement a portion of the remedial actions described in the Record of Decision for the South Bay Asbestos Area Superfund site, dated September 29, 1989, for the property identified as Area 13 in Section VI of this Order. This Order is issued to Respondents by the United States Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Sections 104(e) and 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. Sections 9604(e) and 9606(a). This authority was delegated to the Administrator of EPA on January

23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), redelegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B, and was further delegated to the Director, Hazardous Waste Management Division, EPA Region 9 by Order R1290.43, dated October 26, 1988.

II. FINDINGS OF FACT

1. The South Bay Asbestos Area Superfund site ("SBAA Site" or "Site") encompasses approximately 550 acres and is located at the northern end of Santa Clara Valley and at the southernmost end of San Francisco Bay (Attachment 1, Figure 1). The SBAA Site is located in the community of Alviso, which is the northernmost section of the City of San Jose, California (Attachment 1, Figure 2). The Site contains numerous truck and industrial yards within its boundaries. This Order specifically addresses the property designated for the purposes of this Order as Area 13, located at 1341 Archer Street and at the adjacent lot believed to be 1297 Archer Street (in Alviso), San Jose, California (identified more precisely in Attachment 2, Figure 3) and is identified in the records of the Santa Clara County Tax Assessor as Parcel # 015-13-016.

2. The property (hereinafter referred to as "Area 13") is currently owned by Charlotte Thompson, who has owned this property since 1970. George Maciel Trucking, Inc. and A&R Concrete each operate businesses in Area 13.

1 3. George Maciel Trucking, Inc. operates a trucking and
2 vehicle maintenance business at Area 13, which consists of haul-
3 ing of a variety of materials and of repairing vehicles. Opera-
4 tion of George Maciel Trucking, Inc. involves the movement of
5 trucks and other vehicular traffic over unpaved soils at Area 13.
6 In response to inquiries from an EPA representative in February
7 1990, a legal representative for George Maciel Trucking, Inc.,
8 indicated that the company dispatched large bottom dump trucks on
9 a daily basis.

10 4. A&R Concrete operates a concrete manufacturing and
11 vehicle maintenance business at Area 13, which consists of the
12 hauling of raw materials, the mixing of concrete, the loading of
13 trucks and the repairing of vehicles. Operation of A&R Concrete
14 involves the movement of trucks and other vehicles over unpaved
15 soils at Area 13. In response to EPA inquiries in June and Sep-
16 tember 1991, a co-owner of A&R Concrete indicated that the com-
17 pany used trucks for concrete mixing and for unloading sand, rock
18 and cement, and that the vehicles made several trips per day.

19 5. As the soils in Area 13 are contaminated with asbestos,
20 the level of vehicular traffic through Area 13 may generate
21 releases of dust into the air which contain a significant amount
22 of asbestos fibers.

23 6. In October 1984, pursuant to section 105 of CERCLA, 42
24 U.S.C. Section 9605, EPA placed the SBAA Site on the National
25 Priorities List, set forth at 40 C.F.R. Part 300, Appendix B (48
26 Fed. Reg. 40658).

27

1 7. From approximately June 1986 to approximately January
2 1989, EPA undertook a Remedial Investigation and Feasibility
3 Study ("RI/FS") to determine the nature and extent of contamina-
4 tion at the Site, and to provide the necessary information to
5 select the final remedial action at the Site, pursuant to CERCLA
6 and the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

7 8. Pursuant to section 117 of CERCLA, 42 U.S.C. Section
8 9617, on June 7, 1989, EPA published notice of the completion of
9 the Feasibility Study and of the availability of the proposed
10 plan for the final remedial action, and provided opportunity for
11 public comment on the proposed final remedial action.

12 9. The decision by EPA on the final remedial action to be
13 implemented at the Site is embodied in a final Record of Decision
14 ("ROD"), executed on September 29, 1989. The State of California
15 has reviewed the ROD and did not have any comments on the techni-
16 cal nature of the remedy selected by EPA. The Record of Decision
17 is attached to this Order as Attachment 1 and is incorporated by
18 reference. The Record of Decision is supported by an administra-
19 tive record that contains the documents and information upon
20 which EPA based the selection of the response action. The ad-
21 ministrative record was available for public review during the
22 period for public comment on the proposed remedial action. The
23 administrative record is located at the San Jose Public Library,
24 Alviso Branch, the Family Health Foundation, Community Health
25 Education office in Alviso, and in EPA's Region 9 office.

26
27

1 10. Based on the September 29, 1989 ROD, the final remedy
2 selected for the Site consists of (1) paving asbestos con-
3 taminated truck and industrial yards; (2) monthly wet sweeping of
4 Alviso streets; (3) removal of asbestos waste debris; (4) verify-
5 ing adequacy of cover material and placing deed restrictions on
6 landfills; and (5) establishing routine maintenance controls for
7 the remediation. A complete description of the final remedy for
8 this Site is contained in the September 29, 1989 ROD.

9 11. The hazardous substance of primary concern found at the
10 Site is asbestos. Asbestos has been designated by EPA as a known
11 human carcinogen. EPA sampling has detected asbestos in the air,
12 soils, and groundwater at the Site.

13 12. The current land uses of the Site consist of a mix of
14 agricultural, light industrial, commercial and residential uses.
15 Actual or threatened releases from this Site, if not addressed by
16 implementing the response action selected in the ROD, may present
17 an imminent and substantial endangerment to the public health,
18 welfare or the environment. EPA has determined that remediation
19 is appropriate based on the following facts:

20 (a) Asbestos is a known human carcinogen with no known
21 threshold level of exposure below which the risk of developing
22 cancer is reduced to zero;

23 (b) Asbestos is present in soils in Area 13 and other areas
24 in the SBAA Site, at concentrations greater than 1 area percent,
25 as measured by Polarized Light Microscopy (PLM), and was found as
26 high as 2.5% at Area 13;

27

1 (c) The business operations of both George Maciel Trucking,
2 Inc. and A&R Concrete at Area 13 require frequent vehicular traf-
3 fic over contaminated soils, as described in Paragraphs 3,4, and
4 5 of this Section. The ROD identifies inhalation of airborne as-
5 bestos from the physical disturbance of soils as the exposure
6 pathway representing the most significant risk to human health.
7 See Attachment 1, p. 13; and

8 (d) Based on EPA's risk assessment for this site, the risk
9 of human exposure to airborne asbestos at levels found in the
10 vicinity of Area 13 exceeds the threshold of risk warranting
11 remediation under the NCP.

12 13. The ROD requires paving of areas where asbestos is
13 found in surface soils in levels exceeding 1 area percent as
14 measured by PLM, and which also receive or have the potential to
15 receive heavy vehicular traffic. In order to determine which
16 properties require the Paving Remedy, EPA conducted sampling and
17 analysis of soils as described in the Final Sampling and Analysis
18 Summary Report (Attachment 2). The results of samples from Area
19 13 exceed 1 area percent asbestos, as measured by PLM, and Area
20 13 receives and has the continuing potential to receive heavy
21 vehicular traffic.

22 III. CONCLUSIONS OF LAW AND DETERMINATIONS

23 1. Area 13 is a "facility" as defined in Section 101(9) of
24 CERCLA, 42 U.S.C. Section 9601(9).

25 2. Respondents are each a "person" as defined in Section
26 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

27

1 3. Respondents are each a "liable party" as defined in
2 Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), and each is
3 subject to this Order under Section 106(a) of CERCLA, 42 U.S.C.
4 Section 9606(a).

5 4. Asbestos found at Area 13 is a "hazardous substance" as
6 defined in Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

7 5. Asbestos has been released at Area 13 and is continuing
8 to be released or threatened to be released from the soil into
9 the air, which constitutes a "release", as defined in Section
10 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

11 6. The release or threat of release of asbestos from the
12 facility may present an imminent and substantial endangerment to
13 the public health, welfare, or the environment.

14 7. The actions required by this Order are necessary to
15 protect the public health, welfare, or the environment.

16 IV. NOTICE TO THE STATE

17 Prior to issuing this Order, EPA notified the State of
18 California Environmental Protection Agency, Department of Toxic
19 Substances Control of its intent to issue this Order.

20 V. ORDER

21 Based on the foregoing, Respondents are hereby ordered to
22 comply with the following provisions, including but not limited
23 to all attachments to this Order, all documents incorporated by
24 reference into this Order, and all schedules and deadlines in
25 this Order, attached to this Order, or incorporated by reference
26 into this Order.

27

1 VI. DEFINITIONS

2 1. Unless otherwise expressly provided herein, terms used
3 in this Order which are defined in CERCLA or in regulations
4 promulgated under CERCLA shall have the meaning assigned to them
5 in the statute or its implementing regulations. Whenever terms
6 listed below are used in this Order or in the documents attached
7 to this Order or incorporated by reference into this Order, the
8 following definitions shall apply:

9 2. "Area 13" shall mean the property identified as Number
10 13 in Figure 3 of Attachment 2 which is subject to the Remedial
11 Design and Remedial Action requirements. Area 13 is located at
12 1341 Archer Street and the adjacent lot believed to be 1297
13 Archer Street (in Alviso), San Jose, California, and is iden-
14 tified in the records of the Santa Clara County Tax Assessor as
15 Parcel # 015-13-016.

16 3. "CERCLA" shall mean the Comprehensive Environmental
17 Response, Compensation, and Liability Act of 1980, as amended, 42
18 U.S.C. Sections 9601, et seq.

19 4. "Day" shall mean a calendar day unless expressly stated
20 to be a working day. "Working day" shall mean a day other than a
21 Saturday, Sunday, or Federal holiday. In computing any period of
22 time defined in "days" under this Order, where the last day would
23 fall on a Saturday, Sunday, or Federal holiday, the period shall
24 run until the end of the next working day.

25 5. "Deliverable" shall mean any plan, report, document, or
26 any other item required of the Respondents under this Order.

1 6. "EPA" shall mean the United States Environmental
2 Protection Agency.

3 7. "National Contingency Plan" or "NCP" shall mean the Na-
4 tional Oil and Hazardous Substances Pollution Contingency Plan
5 promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. Section
6 9605, codified at 40 C.F.R. Part 300, including any amendments
7 thereto.

8 8. "Operation and Maintenance" or "O&M" shall mean all ac-
9 tivities required under the Operation and Maintenance Plan
10 developed by Respondents pursuant to this Order as approved by
11 EPA.

12 9. "Paragraph" shall mean a portion of this Order iden-
13 tified by an arabic numeral.

14 10. "Paving Remedy" shall mean the response actions con-
15 sisting of applying asphalt, concrete, or other encapsulating
16 material over all portions of Area 13 which were found by EPA to
17 be contaminated with asbestos above the allowable limit of 1 area
18 percent by PLM and which are potentially subject to vehicular
19 traffic.

20 11. "Performance Standards" shall mean those cleanup stan-
21 dards, standards of control, and other substantive requirements,
22 criteria or limitations, identified in the Record of Decision and
23 in Section X of this Order, that the Work required by this Order
24 must attain and maintain. In particular, the Respondents shall
25 take active measures to prevent releases of asbestos from Area 13
26 at any time during and subsequent to the construction of the
27

1 Paving Remedy, including the design and construction of a pave-
2 ment adequate to ensure complete encapsulation of asbestos-
3 contaminated soil to prevent the release of asbestos to the air
4 and the implementation of operations and maintenance measures to
5 ensure the pavement continues to encapsulate the asbestos in the
6 future.

7 12. "PLM" or Polarized Light Microscopy means the EPA- ap-
8 proved test method for analysis of bulk insulation samples and is
9 the analytical test method required in the ROD and by this Order
10 to determine the level of asbestos in soils at the truck and in-
11 dustrial yards at the SBAA Site. Identification of asbestos
12 fibers is made by optical analysis of samples using a polarized
13 light microscope.

14 13. "Record of Decision" or "ROD" shall mean the final EPA
15 Record of Decision for the South Bay Asbestos Area Superfund
16 Site, San Jose, California, signed on September 29, 1989, by the
17 Regional Administrator, EPA Region 9, and all attachments
18 thereto.

19 14. "Remedial Action" or "RA" shall mean those activities,
20 including Operation and Maintenance, to be undertaken by Respon-
21 dents to implement the final plans and specifications submitted
22 by Respondents pursuant to the Remedial Design approved by EPA
23 and required by Section X of this Order, including any additional
24 activities required under Sections XI, XII, XIII, XIV and XV of
25 this Order.

26

27

1 15. "Remedial Design" or "RD" shall mean those activities
2 to be undertaken by Respondents to develop the plans and
3 specifications for the Remedial Action required by Section X of
4 this Order.

5 16. "Response Costs" shall mean all costs, including direct
6 costs, indirect costs, and accrued interest incurred by the
7 United States to perform or support response actions at the Site.
8 Response costs include, but are not limited to, the costs of
9 overseeing the Work, such as the costs of reviewing or developing
10 plans, reports and other items pursuant to this Order, and costs
11 associated with verifying the Work.

12 17. "Section" shall mean a portion of this Order identified
13 by a roman numeral and including one or more paragraphs.

14 18. "SBAA Site" or "Site" shall mean the South Bay Asbestos
15 Area Superfund site (SBAA) as identified in Figure 2 of Attach-
16 ment 1.

17 19. "State" shall mean the State of California Environmen-
18 tal Protection Agency, Department of Toxic Substances Control ac-
19 ting on behalf of the State of California.

20 20. "Work" shall mean all response activities Respondents
21 are required to perform under this Order, including but not
22 limited to, Remedial Design, Remedial Action, and any activities
23 required to be undertaken pursuant to Sections IX through XVI of
24 this Order.

25

26

27

1 VII. NOTICE OF INTENT TO COMPLY

2 Respondents shall each provide, not later than ten (10) days
3 after the effective date of this Order, written notice to the EPA
4 Remedial Project Manager (RPM) stating each Respondent's intent
5 to comply with the terms of this Order. If EPA determines that a
6 Respondent does not unequivocally commit to perform the Work as
7 provided by this Order, such Respondent shall be deemed to have
8 violated this Order and to have failed or refused to comply with
9 this Order. Respondents' written notice shall describe, using
10 facts that exist on or prior to the effective date of this Order,
11 any "sufficient cause" defenses asserted by Respondents under
12 sections 106(b) and 107(c)(3) of CERCLA. The absence of a
13 response by EPA to the notice required by this Section shall not
14 be deemed to be acceptance of Respondents' assertions.

15 VIII. PARTIES BOUND

16 1. This Order shall apply to and be binding upon the
17 Respondents, their directors, officers, employees, agents, suc-
18 cessors, and assigns. No change in the ownership, corporate
19 status, or other control of George Maciel Trucking, Inc. or A&R
20 Concrete shall alter any of the Respondents' responsibilities un-
21 der this Order.

22 2. Each Respondent shall provide a copy of this Order to
23 any prospective owners or successors before a controlling inter-
24 est in either Respondent's assets, property rights, or stock are
25 transferred to the prospective owner or successor. To ensure
26 compliance with this Order, Respondents shall provide a copy of
27

1 this Order to each contractor, sub-contractor, laboratory, or
2 consultant retained to perform any Work under this Order, within
3 five days after the effective date of this Order or on the date
4 such services are retained, whichever date occurs later. Respon-
5 dents shall also provide a copy of this Order to each person rep-
6 resenting Respondents with respect to the Site or the Work and
7 shall condition all contracts and subcontracts entered into
8 hereunder upon performance of the Work in conformity with the
9 terms of this Order. With regard to the activities undertaken
10 pursuant to this Order, each contractor and subcontractor shall
11 be deemed to be related by contract to the Respondents within the
12 meaning of section 107(b)(3) of CERCLA, 42 U.S.C. Section
13 9607(b)(3). Notwithstanding the terms of any contract, Respon-
14 dents are responsible for compliance with this Order and for en-
15 suring that its contractors, subcontractors and agents comply
16 with and perform any Work in accordance with this Order.

17 IX. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE

18 1. Within ten (10) days after the effective date of this
19 Order, any Respondent who owns all or any portion of Area 13
20 shall (1) record a copy or copies of this Order in the ap-
21 propriate governmental office where land ownership and transfer
22 records are filed or recorded; (2) record a notice of obligation
23 to provide access and related covenants; and (3) ensure that the
24 recording of this Order is indexed to the titles of each and
25 every property within Area 13 so as to provide notice to third
26 parties of the issuance and terms of this Order with respect to
27

1 those properties. Any Respondent who owns all or any portion of
2 Area 13 shall, within fifteen (15) days after the effective date
3 of this Order, send notice of full compliance with this Paragraph
4 to EPA.

5 2. Not later than fifteen (15) days prior to any transfer
6 of any real property interest in any property included within
7 Area 13, Respondents who are transferring such property shall
8 submit a true and correct copy of the transfer documents to EPA,
9 and shall identify the transferee by name, principal business ad-
10 dress and effective date of the transfer.

11 X. WORK TO BE PERFORMED

12 A. General Obligations

13 1. Respondents shall cooperate with EPA in providing in-
14 formation to the public regarding the Work. As requested by EPA,
15 Respondents shall participate in the preparation of information
16 for distribution to the public and in public meetings which may
17 be held or sponsored by EPA to explain activities at or relating
18 to the Site.

19 2. Respondents shall finance and perform, at their ex-
20 pense, the implementation of the work as required by this Order
21 within the time periods specified.

22 3. All aspects of the Work shall be performed by qualified
23 employees or contractors of Respondents. Within thirty (30) days
24 after the effective date of this Order, Respondents shall select
25 the employees or contractors which Respondents propose to use in
26 carrying out the Work under this Order and notify EPA in writing
27

1 of the name and qualifications of the employees or contractors.
2 Respondents' selected employees or contractors shall have exper-
3 tise in design and construction of pavement.

4 4. EPA will review and approve/disapprove of Respondents'
5 selected employees or contractors according to the terms of Sec-
6 tion X.A.4. and Section XV.1. and XV.5. of this Order. If EPA
7 disapproves of the selection of employees or a contractor,
8 Respondents shall submit to EPA within 30 days after notice of
9 EPA's disapproval a new list of contractors, including primary
10 support entities and staff, that would be acceptable to Respon-
11 dents. EPA will thereafter provide written notice to Respondents
12 of the names of the contractors that are acceptable to EPA.
13 Respondents may then select any approved contractor(s) from that
14 list and shall notify EPA of the name(s) of the contractor(s)
15 selected within fifteen (15) days of EPA's designation of ap-
16 proved contractors.

17 5. If at any time Respondents propose to use a different
18 contractor, Respondents shall notify EPA and shall obtain ap-
19 proval from EPA before the new contractor performs any Work under
20 this Order.

21 6. Unless otherwise directed by EPA, Respondents shall not
22 perform any Work under this Section prior to EPA's approval of
23 such Work.

24

25

26

27

1 B. Remedial Design and Remedial Action for Paving Remedy

2 1. Within sixty (60) days after Respondents' obtain EPA's
3 approval of Respondents' selected employees or contractor,
4 Respondents shall submit to EPA a draft of the remedial design
5 plans and specifications ("Remedial Design" or "RD") for con-
6 struction of the Paving Remedy over all unpaved portions of Area
7 13 subject to vehicular traffic. The Remedial Design shall
8 describe in detail the methods and materials to be used to con-
9 struct the pavement and meet all requirements and Performance
10 Standards in the ROD and in this Order, including measures to
11 prevent the release of asbestos dust during construction. The
12 Remedial Design shall include but is not limited to the follow-
13 ing:

14 a) Plans, including but not limited to visual represen-
15 tations to scale of existing site conditions (e.g., driveways,
16 existing pavement, parking areas, buildings, etc.) and areas to
17 be newly paved to comply with this Order, with an estimate of to-
18 tal area in square feet to be paved;

19 b) The proposed pavement cross section indicating the
20 type of material to be used for paving (e.g., asphalt or
21 concrete), thickness, surface preparation, and design basis as-
22 sumptions;

1 c) A detailed description of specific measures to be
2 employed during construction to prevent the visible emissions of
3 asbestos dust from Area 13, and measures to assure worker health
4 and safety, in accordance with the requirements described in
5 Paragraph C.8 of this Section;

6 d) A description of construction methods to be
7 employed including types of equipment, methods for surface
8 preparation, and methods for application of paving material;

9 e) A plan and schedule for O&M activities as
10 described in Paragraph C.6 of this Section; and

11 f) A schedule for implementing the Remedial Action,
12 which incorporates the deadlines set forth in Paragraphs B.1,B.3,
13 and B.4 of this Section.

14 3. Within sixty (60) days of receipt of EPA's comments on
15 the draft Remedial Design, Respondents shall submit a final RD
16 that incorporates EPA's comments.

17 4. Within ninety (90) days of notification of EPA approval
18 of the Remedial Design, the Respondents shall initiate physical
19 construction of the Paving Remedy. Respondents shall provide EPA
20 with thirty (30) days notice of the Respondents' intent to in-
21 itiate construction.

22 5. Upon approval by EPA, the Remedial Design is incor-
23 porated into this Order and shall be an enforceable part of this
24 Order.

25

26

27

1 6. During Remedial Action, Respondents shall take measures
2 to prevent generation of visible dust emissions and to ensure
3 worker health and safety.

4 7. Upon completion of the Remedial Action, Respondents
5 shall implement the Operation and Maintenance (O&M) activities
6 submitted in the Remedial Design and approved by EPA. O&M shall
7 include, but not be limited to, the following:

8 a) Annual inspections of the pavement beginning one
9 year after completion of Remedial Action, including identifica-
10 tion of cracks, holes and any other observable changes to the
11 original condition of the pavement, and of actions required to
12 repair the pavement, if necessary;

13 b) Implementation of repairs, including repaving, if
14 necessary;

15 c) Certification, submitted in writing to EPA within
16 thirty (30) days of the inspection, that the inspection was con-
17 ducted, what the condition of the pavement is, and what repairs
18 are necessary and were or will be made.

19 C. General Requirements For the Work

20 1. The Work performed by Respondents pursuant to this Order
21 shall, at a minimum, achieve Performance Standards.

22 2. Notwithstanding any action by EPA, Respondents remain
23 fully responsible for achieving the Performance Standards. Noth-
24 ing in this Order, or in EPA's approval of Respondents' submis-
25 sions under this Order, shall be deemed to constitute a warranty
26 or representation of any kind by EPA that full performance of the

27

1 Work will achieve the Performance Standards. Respondents' com-
2 pliance with such approved documents does not preclude EPA from
3 seeking additional work to achieve the applicable Performance
4 Standards.

5 3. The Paving Remedy shall extend to all areas subject to
6 vehicular traffic or parking within Area 13.

7 4. The Paving Remedy shall be designed to standards
8 capable of withstanding existing and predicted traffic uses, in-
9 cluding types, weights, and frequencies of vehicles which use or
10 may use the area. The thickness of the pavement material shall
11 be four (4) inches at a minimum. Any proposed modifications to
12 the specifications in this paragraph or elsewhere in this Section
13 shall have adequate justification provided as part of the
14 Remedial Design submittal for EPA review and approval.

15 5. The Paving Remedy shall have a minimum design life of
16 ten (10) years utilizing commonly accepted engineering practices
17 for paving such as those of the American Association of State
18 Highway and Transportation Officials (AASHTO).

19 6. All materials and construction methods shall be in ac-
20 cordance with the State of California Department of Transporta-
21 tion (CALTRANS) Standard Specifications (January 1988), where ap-
22 propriate.

23 7. Dust control measures may include, but are not limited
24 to, soil wetting and selective use of equipment to minimize soil
25 disturbance during construction.

1 8. The Remedial Design shall include measures to be taken
2 during work to protect worker health and safety. The Remedial
3 Design shall comply with the appropriate requirements of 29 C.F.R
4 Section 1910.120 (as amended by 54 Fed. Reg. 9294, March 6, 1989;
5 Occupational Safety Health Guidance for Hazardous Waste Site Ac-
6 tivities (October 1985, DHHS NIOSH, Publication No. 85-115), the
7 NCP requirements for worker health and safety (40 CFR Section
8 300.150) and any other applicable state or federal requirements.

9 9. All soils removed from Area 13 shall be disposed of or
10 treated at a facility approved by EPA in accordance with Section
11 121(d)(3) of CERCLA, 42 U.S.C. Section 9621(d)(3); with the U.S.
12 EPA "Revised Off-Site Policy," OSWER Directive 9834.11, November
13 13, 1987; and with all other applicable Federal, state, and local
14 requirements.

15 10. Within thirty (30) days after Respondents conclude that
16 the Work required by this Order has been fully performed, Respon-
17 dents shall so notify EPA and schedule and conduct an inspection
18 to be attended by Respondents and an EPA representative. The in-
19 spection shall be followed by a written report submitted by
20 Respondents within (30) days of the inspection, certifying that
21 the Work has been completed in full satisfaction of the require-
22 ments of this Order. If, after completion of the inspection and
23 receipt and review of the written report, EPA determines that the
24 Work or any portion thereof has not been completed in accordance
25 with this Order, EPA shall notify Respondents in writing of the
26 activities that must be undertaken to complete the Work and shall

1 set forth in the notice a schedule for performance of such ac-
2 tivities. Respondents shall perform all activities described in
3 the notice in accordance with the specifications and schedules
4 established therein. Nothing in this Section shall limit EPA's
5 right to perform periodic reviews pursuant to Section 121(c) of
6 CERCLA, 42 U.S.C. Section 9621(c), or to take or require any ac-
7 tion that in the judgment of EPA is appropriate at the Site, in
8 accordance with 42 U.S.C. Sections 9604, 9606, or 9607.

9 XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS

10 1. In the event that EPA determines that Performance Stan-
11 dards have not been met, EPA may notify Respondents that addi-
12 tional response actions are necessary.

13 2. Unless otherwise stated by EPA, within thirty (30) days
14 of receipt of notice from EPA that additional response activities
15 are necessary to meet any applicable Performance Standards,
16 Respondents shall submit for approval by EPA a work plan for the
17 additional response activities. The plan shall conform to the
18 applicable requirements of Sections X, XVII, and XVIII of this
19 Order. Upon EPA's approval of the plan pursuant to Section XV,
20 Respondents shall implement the plan for additional response ac-
21 tivities in accordance with the provisions and schedule contained
22 therein.

1 XII. EPA PERIODIC REVIEW

2 Under Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c),
3 and applicable regulations, EPA may review conditions at Area 13
4 to assure that the Work performed pursuant to this Order ade-
5 quately protects human health or the environment. Until such
6 time as EPA certifies completion of the Work, Respondents shall
7 conduct the requisite response actions as determined necessary by
8 EPA in order to permit EPA to conduct the review under Section
9 121(c) of CERCLA. As a result of any review performed under this
10 Section, Respondents may be required to perform additional Work
11 or to modify Work previously performed.

12 XIII. ADDITIONAL RESPONSE ACTIONS

13 1. EPA may determine that in addition to the Work iden-
14 tified in this Order, additional response activities may be
15 necessary to protect human health or the environment. If EPA
16 determines that additional response activities are necessary, EPA
17 may require Respondents to submit a work plan for additional
18 response activities. EPA may also require Respondents to modify
19 any plan, design, or other deliverable required by this Order.

20 2. Not later than thirty (30) days after receiving EPA's
21 notice that additional response activities are required pursuant
22 to this Section, Respondents shall submit a work plan for the
23 response activities to EPA for review and approval. Upon ap-
24 proval by EPA, the work plan is incorporated into this Order as a
25 requirement of this Order and shall be an enforceable part of
26 this Order. Upon approval of the work plan by EPA, Respondents

27

1 shall implement the work plan according to the standards,
2 specifications, and schedule in the approved work plan. Respon-
3 dents shall notify EPA in writing of their intent to perform such
4 additional response activities within seven (7) days after
5 receipt of EPA's request for additional response activities.

6 XIV. ENDANGERMENT AND EMERGENCY RESPONSE

7 1. In the event of any action or occurrence during the
8 performance of the Work which causes or threatens to cause a
9 release of a hazardous substance or which may present an im-
10 mediate threat to public health or welfare or the environment,
11 Respondents shall immediately take appropriate action to prevent,
12 abate, or minimize the threat, and shall immediately notify EPA's
13 Remedial Project Manager (RPM) (See Section XIX). If the RPM is
14 not available, Respondents shall notify the EPA Emergency
15 Response Unit, Region 9 at (415) 744-1914. Respondents shall
16 take such action in consultation with EPA's RPM and in accordance
17 with all applicable provisions of this Order, including but not
18 limited to the Health and Safety Plan and the Contingency Plan
19 required by Section X of this Order. In the event that Respon-
20 dents fail to take appropriate response action as required by
21 this Section, and EPA takes that action instead, Respondents
22 shall be liable to EPA for all costs of the response action not
23 inconsistent with the NCP.

24 2. Nothing in the preceding Paragraph shall be deemed to
25 limit any authority of the United States to take, direct, or or-
26 der all appropriate action to protect human health and the en-
27

1 vironment or to prevent, abate, or minimize an actual or
2 threatened release of hazardous substances on, at, or from the
3 Site.

4 XV. EPA REVIEW OF SUBMISSIONS

5 1. After review of any deliverable, plan, report or other
6 item which is required to be submitted for review and approval
7 pursuant to this Order, EPA may: (a) approve the submission; (b)
8 approve the submission with modifications; (c) disapprove the
9 submission and direct Respondents to re-submit the document after
10 incorporating EPA's comments; or (d) disapprove the submission
11 and assume responsibility for performing all or any part of the
12 response action. As used in this Order, the terms "approval by
13 EPA", "EPA approval", or a similar term means the action
14 described in (a) or (b) of this Paragraph. EPA approval shall be
15 in writing.

16 2. In the event of approval or approval with modifications
17 by EPA, Respondents shall proceed to take any action required by
18 the plan, report, or other item, as approved or modified by EPA.

19 3. Upon receipt of a notice of disapproval or a request
20 for a modification, Respondents shall, within fourteen (14) days
21 or such longer time as specified by EPA in its notice of disap-
22 proval or request for modification, correct the deficiencies and
23 resubmit the plan, report, or other item for approval. Not-
24 withstanding the notice of disapproval, or approval with
25
26
27

1 modifications, Respondents shall proceed, at the direction of
2 EPA, to take any action required by any portion of the submission
3 which EPA has approved.

4 4. If any submission is not approved by EPA, Respondents
5 shall be deemed to be in violation of this Order.

6 5. Notwithstanding any approvals which may be granted by
7 the EPA, no warranty of any kind is provided by EPA with regard
8 to the Work.

9 6. Any reports, plans, specifications, schedules, appen-
10 dices, and attachments required or established by this Order are,
11 upon approval by EPA, incorporated into this Order.

12 XVI. PROGRESS REPORTS

13 In addition to the other deliverables set forth in this
14 Order, Respondents shall provide progress reports to EPA with
15 respect to actions and activities undertaken pursuant to this Or-
16 der. Two progress reports shall be submitted: one report thirty
17 (30) days prior to the start of Remedial Action, and a second
18 report within thirty days after completion of the paving remedy.
19 At a minimum these progress reports shall: (1) describe the ac-
20 tions which have been taken to comply with this Order; (2)
21 describe all Work activities to be commenced or that have been
22 completed; and (3) describe all problems encountered and any an-
23 ticipated problems, any actual or anticipated delays, and solu-
24 tions developed and implemented to address any actual or an-
25 ticipated problems or delays.

26

27

1 XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

2 If the Respondents conduct any sampling of Area 13, either
3 on their own initiative or if required by EPA, the sampling shall
4 be conducted in accordance with all applicable quality assurance
5 and quality control requirements. Any sampling proposed by
6 Respondents shall be submitted to EPA for review and approval.

7 XVIII. COMPLIANCE WITH APPLICABLE LAWS

8 1. All activities by Respondents pursuant to this Order
9 shall be performed in accordance with the requirements of all ap-
10 plicable federal, state, and local laws, regulations, and permit-
11 ting requirements. EPA has determined that the response actions
12 required by this Order, if performed in accordance with this Or-
13 der, are consistent with the National Contingency Plan (NCP).

14 2. As provided in Section 121(e) of CERCLA and in the NCP,
15 no permit shall be required for any portion of the Work conducted
16 entirely on-site. Where any portion of the Work requires a
17 federal or state permit or approval, Respondents shall submit
18 timely applications and take all other actions necessary to ob-
19 tain and to comply with all such permits or approvals.

20 3. This Order is not, and shall not be construed to be, a
21 permit issued pursuant to any federal or state statute or regula-
22 tion.

23 4. Nothing in this Order shall be deemed to constitute a
24 preauthorization of a CERCLA claim within the meaning of Sections
25 111 or 112 of CERCLA, 42 U.S.C. Section 9611 or 9612, or 40
26 C.F.R. Section 300.25(d).

1 XIX. REMEDIAL PROJECT MANAGER

2 1. All communications, whether written or oral, from Respon-
3 dents to EPA shall be directed to EPA's Remedial Project Manager
4 ("RPM") with a copy of any notifications required by this Order
5 directed to EPA's Assistant Regional Counsel. Respondents shall
6 submit to EPA two copies of all documents, including plans,
7 reports, and other correspondence, which are developed pursuant
8 to this Order, and shall send these documents by certified mail,
9 return receipt requested. EPA's Remedial Project Manager is:

10 Eric Yunker, 75 Hawthorne Street (H-6-2), San Francisco, CA
11 94105, phone number: (415) 744-2217.

12 EPA's Assistant Regional Counsel is:

13 Allyn L. Stern, Office of Regional Counsel, 75 Hawthorne
14 Street, San Francisco, CA 94105, phone number (415) 744-1376.

15 2. EPA may change its Remedial Project Manager or Assis-
16 tant Regional Counsel.

17 3. EPA's RPM shall have the authority lawfully vested in a
18 Remedial Project Manager (RPM) and in an On-Scene Coordinator
19 (OSC) by the National Contingency Plan, 40 C.F.R. Part 300.
20 EPA's RPM shall have authority, consistent with the National Con-
21 tingency Plan, to halt any work required by this Order, and to
22 take any necessary response action.

23 4. Within ten (10) days after the effective date of this
24 Order, Respondents shall designate a Project Coordinator to rep-
25 resent them regarding the Work addressed in this Order, and shall
26 submit the name, address, and telephone number of the Project
27

1 Coordinator to EPA. Respondents' Project Coordinator shall be
2 responsible for overseeing Respondents' implementation of this
3 Order and for coordination of communication between EPA and
4 Respondents.

5 XX. ACCESS TO SITE NOT OWNED BY RESPONDENTS

6 1. If Area 13, any other area that is to be used for ac-
7 cess, property where documents required to be prepared or main-
8 tained by this Order are located, or other property subject to or
9 affected by the clean up, is owned in whole or in part by parties
10 other than those bound by this Order, Respondents shall obtain
11 site access agreements from the present owner(s) within thirty
12 (30) days of the effective date of this Order. Such agreements
13 shall provide access for EPA, its contractors and oversight offi-
14 cials, the state and its contractors, and Respondents or Respon-
15 dents' authorized representatives and contractors, and such
16 agreements shall specify that Respondents are not EPA's represen-
17 tative with respect to liability associated with the Work con-
18 ducted at Area 13. Copies of such agreements shall be provided
19 to EPA prior to Respondents' initiation of field activities.

20 2. If access agreements are not obtained within the time
21 referenced above, Respondents shall immediately notify EPA of
22 their failure to obtain access. In its sole discretion, EPA may
23 decide to perform those response actions with EPA contractors at
24 the property in question or take other action with regard to ac-
25 cess issues. If EPA decides to perform those tasks or ac-
26 tivities, Respondents shall perform all other activities not re-

1 quiring access to that property. Respondents shall integrate the
2 results of any such tasks undertaken by EPA into its reports and
3 deliverables.

4 XXI. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

5 1. Respondents shall allow EPA and its authorized represen-
6 tatives and contractors to enter and freely move about all
7 property at Area 13 and other areas subject to or affected by the
8 Work under this Order or where documents required to be prepared
9 or maintained by this Order are located as deemed necessary by
10 EPA, including such access for the purposes of inspecting condi-
11 tions, activities, the results of activities, records, operating
12 logs, and contracts related to the Site or Respondents and their
13 representatives or contractors pursuant to this Order; reviewing
14 the progress of Respondents in carrying out the terms of this Or-
15 der; conducting tests if EPA or its authorized representatives or
16 contractors deem necessary; using a camera, sound recording
17 device or other documentary type equipment; and verifying the
18 data submitted to EPA by Respondents. Respondents shall allow
19 EPA and its authorized representatives to enter Area 13, to in-
20 spect and copy all records, files, photographs, documents, sam-
21 pling and monitoring data, and other writings related to Work un-
22 dertaken in carrying out this Order. Nothing herein shall be in-
23 terpreted as limiting or affecting EPA's right of entry or in-
24 spection authority under federal law.

1 2. Under the provisions of Section 104(e) of CERCLA, 42
2 U.S.C. Section, 9604(e), EPA explicitly reserves the right to ob-
3 serve the Work of Respondents as it is performed.

4 3. Respondents may assert a claim of business confiden-
5 tiality covering part or all of the information submitted to EPA
6 pursuant to the terms of this Order under 40 C.F.R. section 2.203
7 only if such claim is not inconsistent with Section 104(e)(7) of
8 CERCLA, 42 U.S.C. section 9604(e)(7), or other provisions of law.
9 Any such claim shall be asserted in the manner described by 40
10 C.F.R. section 2.203(b) and substantiated by Respondents at the
11 time the claim is made. Information determined by EPA to be con-
12 fidential will be given the protection specified in 40 C.F.R.
13 Part 2. If no such claim accompanies the information when it is
14 submitted to EPA, it may be made available to the public by EPA
15 or the state without further notice to the Respondents. Respon-
16 dents shall not assert confidentiality claims with respect to any
17 sampling or analytical data or reports generated under this Order
18 or for documents that fall under Section 104(e)(7)(F) of CERCLA,
19 42 U.S.C. Section 9604(e)(7)(F).

20 4. If Respondents claim that any documents referenced in
21 Paragraph 3 of this Section are confidential information, they
22 shall maintain an index of such documents for the period during
23 which this Order is in effect. The index shall contain, for each
24 document, the date, author, addressee, and subject of the docu-
25 ment. Upon written request from EPA, Respondents shall submit a
26 copy of the index to EPA.

1 XXII. RECORD PRESERVATION

2 1. Respondents shall provide to EPA upon request, copies
3 of any and all documents and information within its possession or
4 control or in possession or control of its divisions, employees,
5 agents, accountants, contractors, or attorneys (other than docu-
6 ments or information privileged under the attorney-client or work
7 product privileges) relating to activities at Area 13 or to the
8 implementation of this Order, including but not limited to sam-
9 pling, analysis, chain of custody records, manifests, trucking
10 logs, receipts, reports, sample traffic routing, correspondence,
11 or other documents or information related to the Work. Respon-
12 dents shall also make available to EPA for purposes of investiga-
13 tion, information gathering, or testimony, its employees, agents,
14 or representatives with knowledge of relevant facts concerning
15 the performance of the Work.

16 2. For a period of six (6) years following Respondents'
17 completion of the Work pursuant to Section X.C.10. of this Order,
18 Respondents shall preserve and retain all records and documents
19 in their its possession or control or in the possession or con-
20 trol of their employees, agents, accountants, contractors or at-
21 torneys, that relate in any manner to the Work, environmental
22 conditions at the Site, the causes of the environmental condi-
23 tions at Area 13, Respondents' liability for those environmental
24 conditions, Respondents' use or disposal of hazardous substances
25 at the Site, or the implementation of this Order. At the conclu-
26 sion of this document retention period, Respondents shall notify
27

1 EPA at least ninety (90) days prior to the destruction of any
2 such records or documents, and upon request by EPA, Respondents
3 shall deliver any such records or documents to EPA.

4 3. Until six (6) years after Respondents' completion of
5 the Work pursuant to Section X.C.10. of this Order, Respondents
6 shall preserve, and shall instruct their contractors and agents
7 to preserve, all documents, records, and information of whatever
8 kind, nature or description relating to the performance of the
9 Work. Upon the conclusion of this document retention period,
10 Respondents shall notify EPA at least ninety (90) days prior to
11 the destruction of any such records, documents or information,
12 and, upon request of EPA, Respondents shall deliver all such
13 documents, records and information to EPA.

14 4. Within thirty (30) days after the effective date of
15 this Order, each Respondent shall submit a written certification
16 to EPA's RPM stating whether or not Respondents have altered,
17 mutilated, discarded, disposed of, or destroyed, since notifica-
18 tion of potential liability by the United States or the State,
19 any records, documents or other information relating to: 1) its
20 potential liability under CERCLA, 2) and its use of or disposal
21 of hazardous substances with regard to the Site. Respondents
22 shall not dispose of any such documents after the effective date
23 of this Order without prior approval by EPA. Respondents shall,
24 upon EPA's request and at no cost to EPA, deliver the documents
25 or copies of the documents to EPA.

1 XXIII. DELAY IN PERFORMANCE

2 1. Any delay in performance of this Order that, in EPA's
3 judgment, is not properly justified by Respondents under the
4 terms of this Paragraph shall be considered a violation of this
5 Order. Any delay in performance of this Order shall not affect
6 Respondents' obligations to fully comply with all terms and con-
7 ditions of this Order.

8 2. Respondents shall notify EPA of any delay or an-
9 ticipated delay in performing any requirement of this Order.
10 Such notification shall be made by telephone to EPA's RPM within
11 twenty-four (24) hours after Respondents first knew or should
12 have known that a delay might occur. Respondents shall adopt all
13 reasonable measures to avoid or minimize any such delay. Within
14 four (4) days after notifying EPA by telephone, Respondents shall
15 provide written notification fully describing the nature of the
16 delay, any asserted justification for delay, any reason why
17 Respondents should not be held strictly accountable for failing
18 to comply with any relevant requirements of this Order, the
19 measures planned and taken to minimize the delay, and a schedule
20 for implementing the measures that will be taken to mitigate the
21 effect of the delay. Increased costs or expenses associated with
22 implementation of the activities called for in this Order are not
23 a justification for any delay in performance.

1 XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK

2 1. Respondents shall demonstrate their ability to complete
3 the Work required by this Order and to pay all claims that arise
4 from the performance of the Work by obtaining and presenting to
5 EPA within thirty (30) days after the effective date of this Or-
6 der, financial information which is sufficient to allow EPA to
7 determine that Respondents have sufficient assets available to
8 perform the Work. Respondents shall demonstrate financial as-
9 surance in an amount no less than the estimate of cost for the
10 Remedial Design and Remedial Action (including Operation and
11 Maintenance) for Area 13.

12 2. At least seven (7) days prior to commencing any Work at
13 Area 13 pursuant to this Order, Respondents shall submit to EPA a
14 certification that Respondents or their contractors and sub-
15 contractors have adequate insurance coverage or have indemnifica-
16 tion for liabilities for injuries or damages to persons or
17 property which may result from the activities to be conducted by
18 or on behalf of Respondents pursuant to this Order. Respondents
19 shall ensure that such insurance or indemnification is maintained
20 for the duration of the Work required by this Order.

21 XXV. UNITED STATES NOT LIABLE

22 The United States, by issuance of this Order, assumes no
23 liability for any injuries or damages to persons or property
24 resulting entirely or partially from acts or omissions by Respon-
25 dents, or their directors, officers, employees, agents, represen-
26 tatives, successors, assigns, contractors, or consultants in car-
27

1 rying out any action or activity pursuant to this Order. Neither
2 EPA nor the United States may be deemed to be a party to any con-
3 tract entered into by Respondents or their directors, officers,
4 employees, agents, successors, assigns, contractors, or consult-
5 ants in carrying out any action or activity pursuant to this Or-
6 der. Respondents, their directors, officers, employees, agents,
7 successors, assigns, contractors, and consultants shall not be
8 considered agents of the United States.

9 XXVI. ENFORCEMENT AND RESERVATIONS

10 1. EPA reserves the right to bring an action against
11 Respondents under Section 107 of CERCLA, 42 U.S.C. Section 9607,
12 for recovery of any response costs incurred by the United States
13 related to this Order and not reimbursed by Respondents. This
14 reservation shall include but not be limited to past costs,
15 direct costs, indirect costs, the costs of any response actions
16 EPA takes under this Order, the costs of oversight, the costs of
17 compiling the cost documentation to support oversight cost
18 demand, as well as accrued interest as provided in Section 107(a)
19 of CERCLA. In addition, EPA reserves the right to bring an ac-
20 tion against Respondents for civil penalties under Section 106(b)
21 of CERCLA, 42 U.S.C. Section 9606(b), and for treble damages un-
22 der Section 107(c)(3) of CERCLA, 42 U.S.C. Section 9607(c)(3).

23 2. Notwithstanding any other provision of this Order, at
24 any time during the response action, EPA may perform its own
25 studies, complete the response action (or any portion of the
26
27

1 response action) as provided in CERCLA and the NCP, and seek
2 reimbursement from Respondents for its costs, or seek any other
3 appropriate relief.

4 3. Nothing in this Order shall preclude EPA from taking
5 any additional enforcement actions, including modification of
6 this Order or issuance of additional Orders, and/or additional
7 remedial or removal actions as EPA may deem necessary, or from
8 requiring Respondents in the future to perform additional ac-
9 tivities pursuant to CERCLA, 42 U.S.C. Section 9606(a), et seq.,
10 or any other applicable law. Respondents shall be liable as
11 provided in CERCLA Section 107(a), 42 U.S.C. Section 9607(a), for
12 the costs of any such additional actions.

13 4. Notwithstanding any provision of this Order, the United
14 States retains all of its information gathering, inspection and
15 enforcement authorities and rights under CERCLA, RCRA and any
16 other applicable statutes or regulations.

17 XXVII. CIVIL PENALTIES

18 1. Respondents shall be subject to civil penalties under
19 Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), of not more
20 than \$25,000 for each day in which Respondents willfully violate,
21 or fail or refuse to comply with this Order without sufficient
22 cause. In addition, failure to properly provide response action
23 under this Order, or any portion hereof, without sufficient
24 cause, may result in liability under Section 107(c)(3) of CERCLA,
25 42 U.S.C. Section 9607(c)(3), for punitive damages in an amount
26
27

1 at least equal to, and not more than three times, the amount of
2 any costs incurred by the Fund as a result of such failure to
3 take proper action.

4 2. Nothing in this Order shall constitute or be construed
5 as a release from any claim, cause of action or demand in law or
6 equity against any person for any liability it may have arising
7 out of or relating in any way to the Site.

8 3. If a court issues an order that invalidates any provi-
9 sion of this Order or finds that Respondents have sufficient
10 cause not to comply with one or more provisions of this Order,
11 Respondents shall remain bound to comply with all provisions of
12 this Order not invalidated by the court's order.

13 XXVIII. ADMINISTRATIVE RECORD

14 Upon request by EPA, Respondents must submit to EPA all
15 documents related to the selection of the response action for
16 possible inclusion in the administrative record file.

17 XXIX. EFFECTIVE DATE AND COMPUTATION OF TIME

18 This Order shall be effective 30 days after signature of
19 this Order by the Director, Hazardous Waste Management Division.
20 Unless otherwise specified in this Order, all times for perfor-
21 mance of ordered activities shall be calculated from this effec-
22 tive date.

23

24

25

26

27

1 XXX. SECTION HEADINGS AND ATTACHMENTS

2 1. The section headings set forth in this Order and its
3 Table of Contents are included for convenience of reference only
4 and shall be disregarded in the construction and interpretation
5 of any of the provisions of this Order.

6 2. The following attachments are appended to and incor-
7 porated into this Order:

8 "Attachment 1" is the ROD.

9 "Attachment 2" is the Final Sampling and Analysis Sum-
10 mary Report for the Remedial Design/Remedial Action at the Truck-
11 yards in the South Bay Asbestos Area, San Jose, California (July
12 29, 1991).

13 XXXI. OPPORTUNITY TO CONFER

14 Respondents may, within fourteen (14) days after the date
15 this Order is signed, request a conference with EPA's Assistant
16 Regional Counsel and Remedial Project Manager to discuss this Or-
17 der. The purpose and scope of the conference shall be limited to
18 issues involving the implementation of the response actions re-
19 quired by this Order and extent to which Respondents intend to
20 comply with this Order. This conference is not an evidentiary
21 hearing, and does not constitute a proceeding to challenge this
22 Order. It does not give Respondents a right to seek review of
23 this Order, or to seek resolution of potential liability, and no
24 official stenographic record of the conference will be made.

1 At any conference held pursuant to a Respondent's request, a
2 Respondent may appear in person or be represented by an attorney
3 or other representative. Requests for a conference must be by
4 telephone followed by written confirmation mailed that day to
5 EPA's Assistant Regional Counsel.

6

7

8


9

10

11

12 So Ordered, this 30th day of September, 1991.

13

14 BY: 
15 Jeffrey Zelickson
16 Director, Hazardous Waste Management Division
U.S. Environmental Protection Agency
Region 9

17

18

19

20

21

22

23

24

25

26

27

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND JURISDICTION.....	1
II. FINDINGS OF FACT.....	2
III. CONCLUSIONS OF LAW AND DETERMINATIONS.....	6
IV. NOTICE TO THE STATE.....	7
V. ORDER.....	7
VI. DEFINITIONS.....	8
VII. NOTICE OF INTENT TO COMPLY.....	12
VIII. PARTIES BOUND.....	12
IX. NOTICE OF OBLIGATIONS TO SUCCESSORS-IN-TITLE.....	13
X. WORK TO BE PERFORMED.....	14
A. <u>General Obligations</u>	14
B. <u>Remedial Design & Remedial Action</u> <u>for Paving Remedy</u>	16
C. <u>General Requirements for the Work</u>	18
XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS.....	21
XII. EPA PERIODIC REVIEW	22
XIII. ADDITIONAL RESPONSE ACTIONS.....	22
XIV. ENDANGERMENT AND EMERGENCY RESPONSE.....	23
XV. EPA REVIEW OF SUBMISSIONS	24
XVI. PROGRESS REPORTS.....	25
XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS.....	26
XVIII. COMPLIANCE WITH APPLICABLE LAWS.....	26
XIX. REMEDIAL PROJECT MANAGER.....	27
XX. ACCESS TO SITE NOT OWNED BY RESPONDENT.....	28
XXI. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY.....	29

1	XXII. RECORD PRESERVATION.....	31
2	XXIII. DELAY IN PERFORMANCE.....	33
3	XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK.....	34
4	XXV. UNITED STATES NOT LIABLE.....	34
5	XXVI. ENFORCEMENT AND RESERVATIONS.....	35
6	XXVII. CIVIL PENALTIES.....	36
7	XXVIII. ADMINISTRATIVE RECORD.....	37
8	XXIX. EFFECTIVE DATE AND COMPUTATION OF TIME.....	37
9	XXX. SECTION HEADINGS AND ATTACHMENTS.....	38
10	XXXI. OPPORTUNITY TO CONFER.....	38
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		